attach thereto any conditions it chooses, and the trustee in bankruptcy takes subject to those conditions. *Hyde* v. *Woods*, 94 U. S. 523. Claims arising from transactions on the exchange, however, are contract rights: their value is not derived from any action of the board. Hence, it is submitted, the board cannot control the distribution of the money realized on such claims, contrary to the provisions of the Bankruptcy Act. *Cohen* v. *Budd*, 52 N. Y. Misc. 217. Obviously the fact that the parties may have contracted with reference to such a rule of the exchange is immaterial. A contract whereby A agrees to buy stock from B, and in the event of B's bankruptcy to pay C so much of the purchase price as may be owing by B to C, is clearly opposed to the policy and the letter of the Bankruptcy Act.

BANKRUPTCY — SET-OFF AND COUNTERCLAIM — NO SET-OFF AGAINST AMOUNT DUE ON UNPAID STOCK SUBSCRIPTIONS. — The trustee in bankruptcy of a corporation filed a bill in equity to compel payment by the stockholders of subscriptions to the capital stock. The stockholders pleaded as a set-off the amount to which they were entitled as bondholders on a foreclosed mortgage. Section 68 of the Bankruptcy Act of 1898 allows set-off in all cases of "mutual debts or mutual credits." *Held*, that the set-off is not available. *Babbitt* v. *Read*, 23 Am. B. R. 254 (Circ. Ct., S. D., N. Y.).

The right of set-off between solvent parties is given to prevent cross actions; its object in bankruptcy is to do substantial justice. See *Forster* v. *Williams*, 12 M. & W. 191, 203. But this difference in purpose has not led to any extension of the doctrine under bankruptcy acts. See *Sawyer* v. *Hoag*, 17 Wall. (U. S.) 610, 622. The debts and credits must be due in the same right and capacity. *Wright* v. *Rogers*, 30 Fed. Cas. 692. Thus a debt due to one as executor cannot be set off against a debt due from him individually. *Bishop* v. *Church*, 3 Atk. 691. By the weight of authority there is no right to set off joint or partnership debts against individual debts or *vice versa*, in the absence of special circumstances. *In the Matter of Van Allen*, 37 Barb. (N. Y.) 225. *Contra*, *In re Carrier*, 39 Fed. 193. And one who holds only the bare legal title to a note given by a bankrupt cannot set off against it a debt which he owes to the bankrupt individually. *In re Lane*, 14 Fed. Cas. 1069. The capital stock of a corporation, especially its unpaid subscriptions, is a trust fund for the benefit of the general creditors of the corporation. See *Sawyer* v. *Hoag*, 17 Wall. (U. S.) 610, 620. And so in the principal case the debts are not due in the same right. See *Bausman* v. *Kinnear*, 79 Fed. 172.

CONFLICT OF LAWS — CONTRACTS — INTERPRETATION. — Under a compromise of a contested Massachusetts will, a settlement was made for a minor by which a sum was retained in trust with the provision that if she died before the expiration of the trust, the fund should go to her "heirs at law." All the parties to the settlement were then domiciled in Massachusetts. The infant's domicile was later changed to New York and she there died. *Held*, that the Massachusetts law must determine who are the "heirs at law." *Brandeis* v. *Atkins*, 90 N. E. 861 (Mass.).

When a contract is made in one jurisdiction to be performed in another, the cases are in great conflict as to what law governs its validity. But when a will or deed or simple contract is conceded to be valid, the cases are in substantial harmony as to what law shall govern the interpretation of the words used. The question is really one of fact: What did the parties using them intend? See *Lincoln* v. *Perry*, 149 Mass. 368, 373. In an insurance policy the word "heirs," as designating the beneficiaries, is commonly interpreted under the law of the insured's domicile. *Knights Templars, etc., Aid Ass.* v. *Greene*, 79 Fed. 461. When by a will property is devised to the heirs of a person domiciled abroad, the heirs are determined under the law of the testator's domicile. *In re Fergusson's Will*, [1902] 1 Ch. 483. And if persons domiciled in different jurisdictions contract,

using a form of words in common mercantile use in one of the countries, the law of that country is the one by which they are interpreted. *London Assurance* v. *Companhia de Moagens*, 167 U. S. 149. The issue in each instance is what the words meant to the person from whom they emanated, and this it seems is usually solved by the law of the speaker's domicile.

CONFLICT OF LAWS — CORPORATIONS — POWER OF COURT TO DECREE ASSESSMENTS UPON FOREIGN POLICY-HOLDERS IN DOMESTIC CORPORATIONS. — A New York railway took out policies of mutual casualty insurance in a Pennsylvania corporation. The rate of premium was fixed subject to a power in the directors of the insurer to levy an additional *pro ratâ* assessment. Upon the insolvency of the corporation, the Pennsylvania court decreed a fixed assessment upon all policy-holders. The receiver sued the defendant in New York for the amount of the assessment. *Held*, that the plaintiff can recover. *Stone* v. *Penn Yan, K. P. & B. Ry.*, 90 N. E. 843 (N. Y.).

The question at issue was the propriety of the procedure by which the defendant's obligation was enforced. A judgment without personal jurisdiction cannot have extra-territorial force. *Cf. Pennoyer* v. *Neff*, 95 U. S. 714. The procedure adopted in the principal case is analogous to that frequently employed to enforce a statutory liability against non-resident stockholders of a corporation. *Casey* v. *Galli*, 94 U. S. 673; *Bernheimer* v. *Converse*, 206 U. S. 516. A bill in equity is brought against the corporation in its home state by creditors. In this action the court investigates the assets and liabilities of the corporation and fixes the assessment which shall be made upon the stockholders. The decree does not purport to bind any stockholder individually. Thereafter the receiver must sue the stockholder separately in the state of his domicile. The latter may deny that he is a stockholder, or plead other defenses such as the statute of limitations of the forum. *Great Western Telegraph Co.* v. *Purdy*, 162 U. S. 329. But he cannot question the amount of the assessment. *Howarth* v. *Lombard*, 175 Mass. 570; *Bernheimer* v. *Converse*, *supra*. By voluntarily assuming an obligation in a foreign state, the stockholder — and in the present case the insured — consents to have the extent of the obligation determined by that state. See 23 HARV. L. REV. 37.

CONFLICT OF LAWS — LEGITIMACY AND ADOPTION — LEGITIMATION SUBSEQUENT TO BIRTH. — A New York man deserted his wife and purported to marry a New Jersey woman who bore him two children. Thereafter he became domiciled with his family in Michigan, there obtained a divorce from his New York wife by default without personal service, and went through a second marriage ceremony with the New Jersey woman. By Michigan law illegitimate children became legitimate by the subsequent marriage of their parents. The children claimed New York realty under a devise as the "lawful issue" of their father. A decree of the New York court denied recognition to the Michigan divorce and second marriage. *Held*, that the federal Constitution does not require New York to recognize the children as lawful issue. *Olmsted* v. *Olmsted*, U. S. Sup. Ct., Feb. 21, 1910.

For a criticism of this case in the state court, see 20 HARV. L. REV. 400.

CONFLICT OF LAWS — OBLIGATIONS EX DELICTO: CREATION AND ENFORCEMENT — STATUTE GIVING PERSONAL REPRESENTATIVE RIGHT TO SUE FOR DEATH BY WRONGFUL ACT. — X, domiciled in New Jersey, was killed by the negligence of the defendant, a New Jersey corporation. The plaintiff was appointed administrator in New York solely for the purpose of bringing suit in the New York courts. The New Jersey statute gives a right of action for death by wrongful act to the personal representative of the deceased. *Held*, that, inasmuch as there was no *bonâ fide* administration in New York, the New York courts will not entertain jurisdiction. *Pietraroia* v. *New Jersey and Hudson River Ry. & Ferry Co.*, 42 N. Y. L. J. 2123 (N. Y., Ct. App., Feb. 8, 1910). See NOTES, p. 554.